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## FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIAFILED  
JUN -8 2015  
UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re: ) Case No. 14-30386-B-7  
 )  
 LISA J. PASHENEE, ) DC No. PA-3  
 )  
 )  
 Debtor(s). )

## OPINION RE CLAIM OF EXEMPTION

Before: Christopher D. Jaime  
 United States Bankruptcy Judge

Peter G. Macaluso, Sacramento, California, appearing for Debtor  
 Estela O. Pino, Sacramento, California, appearing for John Bell,  
 Chapter 7 Trustee

JAIME, Bankruptcy Judge:

INTRODUCTION

Before the court is an objection by the chapter 7 trustee to an exemption claimed by the debtor. The debtor claimed an exemption for an asset described in Schedule C as a "retirement - IRA Fidelity #6486" in the amount of \$380,348. The debtor claimed this IRA as exempt under California Code of Civil Procedure § 703.140(b)(10)(E), which exempts a right to a payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. There are

1 two critical factual questions involved in determining if the  
2 exemption applies in this case: (1) the source of the right to  
3 the payment claimed as exempt and (2) the extent to which the  
4 payment claimed as exempt is reasonably necessary to support the  
5 debtor and any dependent of the debtor.

6 The trustee's objection to the debtor's claim of exemption  
7 raises a legal question which the court must first resolve before  
8 it can make factual determinations as to whether the elements of  
9 the California exemption statute are satisfied. And that is who  
10 bears the burden of proof as to the elements of the statute? Is  
11 the debtor required to prove the elements of California Code of  
12 Civil Procedure § 703.140(b)(10)(E) are satisfied and establish  
13 that the exemption should be allowed or is the trustee required  
14 to disprove the elements of California Code of Civil Procedure §  
15 703.140(b)(10)(E), and in essence prove a negative, and establish  
16 that the exemption should be disallowed?

17 The trustee contends that the debtor, as the exemption  
18 claimant, is required to prove that the IRA is exempt under  
19 California Code of Civil Procedure § 703.140(b)(10)(E) and the  
20 extent to which that exemption should be allowed. The trustee  
21 relies on California Code of Civil Procedure § 703.580(b) which  
22 states that " . . . the exemption claimant has the burden of  
23 proof." The debtor, on the other hand, argues that the Federal  
24 Rules of Bankruptcy Procedure require the trustee, as the  
25 objecting party, to prove that the IRA is not exempt and that the  
26 exemption claimed under California Code of Civil Procedure  
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1 § 703.140(b)(10)(E) should be disallowed. The debtor relies  
2 specifically on Federal Rule of Bankruptcy Procedure 4003(c)  
3 which states that "[i]n any hearing under this rule, the  
4 objecting party has the burden of proving that the exemptions are  
5 not properly claimed."

6 Resolution of the trustee's objection turns on Raleigh v.  
7 Illinois Dept. of Revenue, 530 U.S. 15 (2000), in which the U.S.  
8 Supreme Court held that the burden of proof is a substantive  
9 element of a claim and, thus, in bankruptcy it remains the same  
10 as under the applicable substantive nonbankruptcy law. As  
11 explained below, the substantive nonbankruptcy law applicable in  
12 this case is California exemption law which allocates the burden  
13 of proof to the debtor as the exemption claimant.

14  
15 **BACKGROUND**

16 The debtor commenced this chapter 7 case on October 20,  
17 2014. On Schedule C filed with her petition, the debtor claimed  
18 the above-referenced IRA in the amount of \$380,348 fully exempt  
19 under California Code of Civil Procedure § 703.140(b)(10)(E).  
20 The trustee objected to that exemption on March 12, 2015. The  
21 debtor responded to the trustee's objection and the trustee  
22 replied to the debtor's response.

23 The court initially heard this matter on April 14, 2015. At  
24 that initial hearing the court disposed of two additional  
25 arguments raised in the debtor's response. The court concluded  
26 that the trustee's objection was timely because it was filed  
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1 within thirty days after the 11 U.S.C. § 341(a) meeting concluded  
2 and any defects in service of the objection were waived by the  
3 debtor's response and statement in her response that no further  
4 proceedings on trustee's objection were necessary or desired.

5 At the initial hearing the court also indicated that it was  
6 inclined to decide the trustee's objection without an evidentiary  
7 hearing. Upon reconsideration, the court now determines that an  
8 evidentiary hearing is necessary. California Code of Civil  
9 Procedure § 703.140(b)(10)(E) is highly factual in nature. It  
10 requires evidence not only of the source of the payment claimed  
11 exempt but, also, evidence of the extent to which the payment  
12 claimed as exempt is reasonably necessary for the support of the  
13 debtor and any dependent of the debtor. The court cannot make  
14 either determination based on the record before it. Therefore,  
15 the trustee's request for an evidentiary hearing on the objection  
16 to the debtor's claim of exemption will be granted.

17  
18 **JURISDICTION AND VENUE**

19 Federal subject-matter jurisdiction is founded on 28 U.S.C.  
20 § 1334. This matter is a core proceeding that a bankruptcy judge  
21 may hear and determine. 28 U.S.C. §§ 157(b)(2)(A), (B) and (O).  
22 To the extent it may ever be determined to be a matter that a  
23 bankruptcy judge may not hear and determine without consent, the  
24 parties nevertheless consent to such determination by a  
25 bankruptcy judge. 28 U.S.C. § 157(c)(2). Venue is proper under  
26 28 U.S.C. § 1409.

1 **DISCUSSION**

2 I.

3 At first blush the debtor's position seems logical. After  
4 all, Federal Rule of Bankruptcy Procedure 4003(c) states that the  
5 party objecting to an exemption must prove that the exemption  
6 should be disallowed and, in this case, the trustee is the  
7 objecting party. It is also not unreasonable to anticipate that  
8 federal procedural rules would govern an exemption proceeding in  
9 a federal bankruptcy case. See Tyner v. Nicholson (In re  
10 Nicholson), 435 B.R. 622, 633-34 (9th Cir. BAP 2010). And there  
11 are also are a number of cases from within this circuit that  
12 support the debtor's position. However, due to the absence of  
13 any analysis of Raleigh or California Code of Civil Procedure  
14 § 703.580(b), those authorities offer little guidance.

15 In Carter v. Anderson (In re Carter), 182 F.3d 1027 (9th  
16 Cir. 1999), the Ninth Circuit briefly discussed the burden of  
17 proof for an objection to a claim of exemption and cited to  
18 Federal Rule of Bankruptcy Procedure 4003(c) for the proposition  
19 that the burden is on the objecting party. Id. at 1029 n.3. The  
20 panel in Carter, however, did not analyze the burden of proof  
21 established by California Code of Civil Procedure § 703.580(b).  
22 Id. In fact, that provision of California exemption law is not  
23 cited or referenced in the opinion. Id. Carter simply assumed,  
24 without analysis, that the burden of proof is established by  
25 Federal Rule of Bankruptcy Procedure 4003(c). More important,  
26 Carter predates Raleigh.

1 Citing Carter and Federal Rule of Bankruptcy Procedure  
2 4003(c), the BAP has also routinely allocated the burden of proof  
3 to the party objecting to a debtor's claim of exemption which,  
4 oftentimes but not always, is the trustee. See e.g., Elliott v.  
5 Weil (In re Elliott), 523 B.R. 188, 192 (9th Cir. BAP 2014);  
6 Calderon v. Lang (In re Calderon), 507 B.R. 724, 729 (9th Cir.  
7 BAP 2014); Diener v. McBeth (In re Diener), 483 B.R. 196, 203  
8 (9th Cir. BAP 2012); Leavitt v. Alexander (In re Alexander), 472  
9 B.R. 815, 821 (9th Cir. BAP 2012); Mullen v. Hamlin (In re  
10 Hamlin), 465 B.R. 863, 869 (9th Cir. BAP 2012); Hopkins v.  
11 Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (9th Cir. BAP  
12 2009). These cases are also distinguishable.

13 Elliott and Diener cited Carter and Federal Rule of  
14 Bankruptcy Procedure 4003(c) as the source of the burden of proof  
15 but they did not consider the burden of proof applicable to  
16 exemptions established under California law. They also did not  
17 refer to or cite California Code of Civil Procedure § 703.580(b)  
18 and, more important, they did not consider Raleigh's impact on  
19 the Federal Rules of Bankruptcy Procedure in the context of  
20 conflicting and applicable state exemption law. Calderon and  
21 Hamlin were decided under Arizona law, Cerchione was decided  
22 under Idaho law, and Alexander was decided under Nevada law.  
23 Each of those cases simply cited Federal Rule of Bankruptcy  
24 Procedure 4003(c) without any reference to the burden of proof  
25 under their respective state's law.

26 This court has itself expressed divergent views on the  
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1 burden of proof in an exemption objection proceeding. In re  
2 Gomez, \_\_\_ B.R. \_\_\_, 2015 WL 2152817 at \*1 (Bankr. E.D. Cal.  
3 2015), In re Dunnaway, 466 B.R. 515, 520 (Bankr. E.D. Cal. 2012),  
4 and In re Lynne, 2009 WL 9085532 at \*1 (Bankr. E.D. Cal. 2009),  
5 cases in which the allocation was not at issue and, thus, neither  
6 Raleigh nor California Code of Civil Procedure § 703.580(b) were  
7 considered, cited Carter and Federal Rule of Bankruptcy Procedure  
8 4003(c) to allocate the burden of proof to the trustee as the  
9 objecting party. In re Atmiller-Rubio, 2011 WL 10639468 (Bankr.  
10 E.D. Cal. 2011), declined to address the burden of proof issue  
11 under California law in the context of Raleigh. In re  
12 Washington, No. 14-21607 (Bankr. E.D. Cal. 2014), rejected the  
13 proposition that Raleigh altered the burden under Federal Rule of  
14 Bankruptcy Procedure 4003(c). In re Barnes, 275 B.R. 889 (Bankr.  
15 E.D. Cal. 2002), cited Raleigh and the concurring opinion in  
16 Gonzalez v. Davis (In re Davis), 323 B.R. 732 (9th Cir. 2005)  
17 (Klein, J., concurring), and suggested that Federal Rule of  
18 Bankruptcy Procedure 4003(c) may run afoul of Raleigh because the  
19 burden of proof under California Code of Civil Procedure  
20 § 703.580(b) is substantive and should govern an objection to a  
21 California exemption. Id. at 899 n.2.

22 For the reasons explained below, this court agrees with  
23 Barnes and the concurring opinion in Davis and concludes that, in  
24 this case, Federal Rule of Bankruptcy Procedure 4003(c) runs  
25 afoul of Raleigh. Because California law mandates the use of  
26 state exemptions, prohibits the use of federal exemptions, and  
27

1 allocates the burden of proof to the exemption claimant, the  
2 court further concludes that California Code of Civil Procedure  
3 § 703.580(b) is a substantive element of a California exemption  
4 and California exemption law that must be applied inside  
5 bankruptcy the same as it would outside bankruptcy. This  
6 conclusion is required by Raleigh and reinforced by recent U.S.  
7 Supreme Court and Ninth Circuit authority. Therefore, the  
8 debtor, as the exemption claimant, bears the burden of proof  
9 which requires her to establish by a preponderance of the  
10 evidence that the \$380,348 IRA claimed as exempt in Schedule C is  
11 exempt under California Code of Civil Procedure  
12 § 703.140(b)(10)(E) and the extent to which that exemption  
13 applies.

## 14 15 II.

16 Generally, when a debtor files bankruptcy, all of the  
17 debtor's property becomes the property of the bankruptcy estate.  
18 See 11 U.S.C. § 541. Federal law, however, provides avenues for  
19 a debtor to exempt certain property. See 11 U.S.C. § 522(d).  
20 This exemption scheme can be supplanted by states that choose to  
21 provide their own menu of exemptions. 11 U.S.C. § 522(b)(2); see  
22 also Granger v. Watson (In re Granger), 754 F.2d 1490, 1492 (9th  
23 Cir. 1985) ("[A] state that has opted out has considerable  
24 freedom in creating exemptions and eligibility requirements for  
25 those exemptions.").

26 California has opted out of the federal exemption scheme and  
27



1 provides its own bankruptcy exemptions. See 11 U.S.C. §§ 522(b)  
2 & (d); Calif. Code Civ. Proc. §§ 703.140(a) & (b). In fact, the  
3 state prohibits the use of federal exemptions and permits its  
4 debtors only the exemptions allowable under state law.  
5 California Code of Civil Procedure § 703.130 states: "Pursuant to  
6 the authority of paragraph (2) of subsection (b) of Section 522  
7 of Title 11 of the United States Code, the exemptions set forth  
8 in subsection (d) of Section 522 of Title 11 of the United States  
9 Code (Bankruptcy) are not authorized in this state."

10 Noting that California has opted out of the federal  
11 exemption scheme and that debtors in California are limited to  
12 state law exemptions, the Ninth Circuit stated in Wolfe v.  
13 Jacobson (In re Jacobson), 676 F.3d 1193 (9th Cir. 2012), a case  
14 that concerned California's homestead exemption, that "exemptions  
15 must be determined in accordance with the state law applicable on  
16 the date of filing[.] And it is the entire state law applicable  
17 on the filing date that is determinative of whether an exemption  
18 applies." Id. at 1199 (emphasis in original) (internal citation  
19 and quotations omitted). The Ninth Circuit rejected the debtor's  
20 argument that in a bankruptcy case the reinvestment requirement  
21 for homestead proceeds should be read out of California's  
22 homestead exemption law and, thus, required the debtor to turn  
23 over proceeds to the trustee that were not timely reinvested. In  
24 so doing, the court implemented its holding that the entire body  
25 of the state's exemption law must be consulted and followed  
26 inside bankruptcy just as it is outside bankruptcy. Id. at 1200.

1 In that regard, Jacobson fits neatly with Raleigh.

2 In Raleigh, the debtor of a defunct corporation owed state  
3 use taxes. Raleigh, 530 U.S. at 18-19. Those taxes were not  
4 paid and the state assessed them to the debtor as the responsible  
5 corporate officer. Id. The debtor filed a chapter 7 petition  
6 and the state filed a proof of claim based on its prior  
7 assessment. Id. The trustee objected to the proof of claim on  
8 the ground that the state had not proven that the debtor was  
9 liable for the tax payment. Id. The U.S. Supreme Court rejected  
10 the trustee's argument reasoning that outside bankruptcy the  
11 corporate officer, i.e., the debtor, would have to prove that he  
12 was not the person responsible for filing returns and paying  
13 taxes. Id. at 20. Inside the bankruptcy court, the U.S. Supreme  
14 Court held that the burden still rested with the debtor, or the  
15 trustee as the representative of the debtor's estate. Id. at 20-  
16 21.

17 Three fundamental aspects of Raleigh govern the court's  
18 decision in this case. First, the U.S. Supreme Court recognized  
19 that the burden of proof is a "substantive aspect of a claim."  
20 Id. at 20-21 (internal quotations and citations omitted). It  
21 reaffirmed that conclusion in Medtronic, Inc. v. Mirowski Family  
22 Ventures, LLC, \_\_\_ U.S. \_\_\_, 134 S.Ct. 843, 849, 187 L. Ed. 2d  
23 703 (2014) (citing Raleigh for the proposition that the burden of  
24 proof is substantive); see also Litton Loan Servicing v. Garvida  
25 (In re Garvida), 347 B.R. 697, 705 (9th Cir. BAP 2006) (citing  
26 Raleigh for the proposition that "[t]he burden of proof is a  
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1 substantive aspect of a claim that comprises an essential element  
2 of the claim itself."); In re Baranowski, 2014 WL 2159734 at \*2  
3 (Bankr. E.D. Cal. 2014) (citing Raleigh for the proposition that  
4 the burden of proof is a substantive aspect of a claim usually  
5 governed by state law). Second, the U.S. Supreme Court explained  
6 that when a matter in dispute is governed by substantive  
7 nonbankruptcy law, the burden of proof is dictated by that same  
8 nonbankruptcy law. Id. at 26. In other words, and in the words  
9 of the U.S. Supreme Court's unambiguous holding, "bankruptcy does  
10 not alter the burden of proof imposed by substantive law." Id.  
11 at 17. And third, because the burden of proof is substantive and  
12 not procedural, the U.S. Supreme Court further explained that in  
13 the absence of modification expressed in the Bankruptcy Code  
14 itself, the burden of proof in bankruptcy remains where the  
15 substantive nonbankruptcy law puts it. Id. at 22, 26.

16 Admittedly, Raleigh was a state tax liability case that  
17 arose in the context of a claim objection and this case involves  
18 an objection to a state law exemption. Some courts have relied  
19 on that distinction to find that Raleigh does not alter the  
20 burden of proof under Federal Rule of Bankruptcy Procedure  
21 4003(c). See Nicholson, 435 B.R. at 633-34. This court is not  
22 persuaded by that distinction for several reasons.

23 The courts that view Raleigh as limited to a tax or claim  
24 objection case also seize upon Raleigh's language that "Congress  
25 may do what it likes with entitlements in bankruptcy" to justify  
26 the allocation of the burden of proof in Federal Rule of  
27 Bankruptcy Procedure 4003(c) to the objecting party. See

1 Nicholson, 435 B.R. at 633 (citing Raleigh, 503 U.S. at 21).  
2 That, however, overlooks Raleigh's other language that the burden  
3 of proof is a substantive element of a claim that only Congress  
4 may alter in the Bankruptcy Code. Raleigh, 503 U.S. at 22, 26.  
5 Indeed, Congress itself has said as much in the rules enabling  
6 act which states that the Federal Rules of Bankruptcy Procedure  
7 "shall not abridge, enlarge, or modify any substantive right."  
8 28 U.S.C. § 2075.

9 And while it is true that Raleigh involved taxes and this  
10 case involves exemptions, both cases nevertheless involve  
11 substantive elements of state law. As the taxes and the burden  
12 of proof that went with those taxes in Raleigh were created and  
13 governed entirely by Illinois law, the exemption and the burden  
14 of proof that goes with it in this case are created and governed  
15 entirely by California law (to the complete exclusion of federal  
16 law nonetheless). And as we now know from Law v. Siegel, 571  
17 U.S. \_\_\_, 134 S. Ct. 1188, 1196-97, 188 L. Ed. 2d 146 (2014),  
18 "[i]t is of course true that when a debtor claims a state-created  
19 exemption, the exemption's scope is determined by state law"  
20 (emphasis in original). See also Simpson v. Burkart (In re  
21 Simpson), 557 F.3d 1010, 1014, (9th Cir. 2009) ("California law  
22 governs substantive issues regarding claimed exemptions.").

23 Raleigh and Jacobson leave the court with no doubt that the  
24 burden of proof in California Code of Civil Procedure  
25 § 703.580(b) is a substantive element of a California exemption.  
26 It is not altered by, and is in fact authorized under, the  
27 Bankruptcy Code. And it is a part of the entire body of

1 California exemption law that must be applied inside bankruptcy  
2 as it would outside bankruptcy. Therefore, the court holds that,  
3 notwithstanding Federal Rule of Bankruptcy Procedure 4003(c),  
4 California Code of Civil Procedure § 703.580(b) requires the  
5 debtor, as the exemption claimant, to prove by a preponderance of  
6 the evidence that the \$380,348 IRA claimed as exempt in Schedule  
7 C is exempt under California Code of Civil Procedure  
8 § 703.140(b)(10)(E) and the extent of that exemption.

9  
10 **CONCLUSION**

11 Based on the foregoing, the court allocates the burden of  
12 proof, both production and persuasion, to the debtor in this  
13 exemption objection proceeding.

14 The court will issue a separate order setting further  
15 proceedings consistent with this opinion.

16 Dated: June 8, 2015.

17  
18   
19 UNITED STATES BANKRUPTCY JUDGE

**INSTRUCTIONS TO CLERK OF COURT  
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Peter G. Macaluso  
7230 South Land Park Drive #127  
Sacramento CA 95831

Estela O. Pino  
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